

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN SAUCER,

No. C 06-7119 MEJ

Plaintiff(s),

ORDER RE: STATUS REPORT

vs.

**ORDER CONTINUING PRETRIAL AND
TRIAL DATES**

OFFICER G. SMIT, et al.,

Defendant(s).

The Court is in receipt of the parties' joint status report, filed March 9, 2009. (Dkt. #25.)

Upon review of the report, the Court finds that it would not be beneficial for the parties to participate in a further settlement conference at this time. However, some or all of the disposition of this case may be resolved through a summary judgment. Accordingly, the Court hereby ORDERS Defendants to file a summary judgment motion by April 16, 2009. The Court shall conduct a hearing on the motion on May 21, 2009 at 10:00 a.m. If necessary after ruling on Defendants' motion, the Court may refer the parties to a further settlement conference.

Further, given that the trial is scheduled to begin on July 27, 2009, it is likely that the parties will need to engage in pretrial filings prior to the issuance of an order on the summary judgment motion. Accordingly, the Court hereby CONTINUES pretrial deadlines and the trial schedule as follows:

A. Exchange and filing of Trial Papers:

1. By November 12, 2009, lead counsel who will try the case shall meet and confer with respect to the preparation and content of the joint pretrial conference statement and shall exchange (but not file or lodge) the papers described in paragraph 2 below.

2. By November 25, 2009, counsel shall file the papers described in Federal Rule of Civil Procedure 26(a)(3) and a joint pretrial conference statement including the following:
- (A) Substance of the Action: A brief description of the substance of claims and defenses which remain to be decided.
- (B) Relief Prayed: A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of damages.
- (C) Undisputed Facts: A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- (D) Disputed Factual Issues: A plain and concise statement of all disputed factual issues which remain to be decided.
- (E) Agreed Statement: A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
- (F) Stipulations: A statement of stipulations requested or proposed for pretrial or trial purposes.
- (G) Witness list: A list of all witnesses to be called for trial. The parties shall submit a page-length detailed summary of the substance of the proposed testimony of each witness, which shall also specify to which disputed fact the testimony relates and an estimate of the time required for direct and cross examination of each prospective witness.
- (H) Exhibit list: A list of all exhibits to be offered at trial. The exhibit list shall list each proposed exhibit by its number or alphabetical letter, description and sponsoring witness. All documents shall be authenticated prior to trial.
- (I) Estimated Time of Trial: An estimate of the number of hours needed for the presentation of each party's case.
- (J) Settlement: A statement summarizing the status of the parties' settlement negotiations.

No party shall be permitted to offer any witness or exhibit in its case in chief that is not

disclosed in its witness or exhibit list without leave of the Court for good cause shown.

3. Motions *in limine*: Counsel are directed to meet and confer to resolve any evidentiary disputes prior to filing motions in limine. Any motions *in limine* shall be filed by November 25, 2009. Any Opposition to motions *in limine* shall be filed by December 3, 2009. These matters will be deemed submitted on the papers without oral argument, unless the Court orders otherwise.
4. Trial Briefs: Counsel shall file trial briefs setting forth the applicable legal standard, pursuant to Ninth Circuit authority, all significant disputed issues of law, including foreseeable procedural and evidentiary issues by December 11, 2009.
5. Joint Proposed Voir Dire (Jury Trial Only): Counsel should submit a **joint** set of requested voir dire to be posed by the Court by December 11, 2009. Any voir dire questions on which counsel cannot agree shall be submitted separately by December 11, 2009. Counsel will be allowed brief follow-up voir dire after the Court's questioning.
6. Joint Proposed Jury Instructions (Jury Trial Only): Jury instructions § 1.01 through § 2.02 and § 3.01 through § 3.15 from the Manual of Model Civil Jury Instructions for the Ninth Circuit will be given absent objection. Counsel shall submit a **joint** set of additional proposed jury instructions by December 11, 2009. The instructions shall be ordered in a logical sequence, together with a table of contents. Any instruction on which counsel cannot agree shall be marked as "disputed," and shall be included within the jointly submitted instructions and accompanying table of contents, in the place where the party proposing the instruction believes it should be given. Argument and authority for and against each disputed instruction shall be included as part of the joint submission, on separate sheets directly following the disputed instruction. The Court prefers that all jury instructions conform to the Manual of Model Civil Jury Instructions for the Ninth Circuit. If possible, counsel shall deliver to the Courtroom Deputy a copy of their joint proposed jury instructions on a computer disk in WordPerfect format. The disk label shall include the

name of the parties, the case number and be entitled "Proposed Jury Instructions."

At the close of Defendant's case in chief, the Court shall hear oral argument on the disputed jury instructions and will then render its rulings.

B. Pretrial Conference:

1. On December 10, 2009, at 10:00 a.m., the Court shall hold a pretrial conference in Courtroom B, 15th Floor of the Federal Building, located at 450 Golden Gate Avenue, San Francisco, California. Lead counsel who will try the case must attend the pretrial conference. The purpose of the pretrial conference is for the Court to rule on any issues raised in the final pretrial conference statement, motions *in limine*, and to discuss the trial of the case.

C. Final Pretrial Conference:

1. On January 7, 2010, at 10:00 a.m., the Court shall hold a final pretrial conference to address any outstanding trial issues.

D. Trial Date:

1. The trial shall commence (with jury selection taking place) on **January 11, 2010** (Trial schedule: Monday through Thursday, at 1:30 p.m. to 5:00 p.m.). The trial shall last seven days.

IT IS SO ORDERED.

Dated: March 10, 2009



MARIA-ELLEN JAMES
United States Magistrate Judge